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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 445

UNITED STATES OF AMERICA, PETITIONER

v.

STANLEY J. PATRYAS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The District Court rendered no opinion. The opinion of the Circuit Court of Appeals (R. 57–60) is reported in 90 F. (2d) 715.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered June 21, 1937. (R. 60.) The petition for a writ of certiorari was filed on September 21, 1937, and granted on November 8, 1937 (R. 62). The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether, in a suit for disability benefits under a contract of United States Government life insurance, the Government is liable where it is shown that total permanent disability occurred prior to the reinstatement and conversion of the insurance.

2. Whether the Circuit Court of Appeals erred in holding (if it did so hold) that the omission of portions of the policy from the bill of exceptions precluded consideration of the Government's motion for a directed verdict.

3. Whether, in any event, the judgment of the District Court should not have been reversed by the court below upon the record proper, apart from the bill of exceptions.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations are printed in Appendices A and B, *infra*, pp. 37–67.

STATEMENT

Stanley J. Patryas, the respondent, brought this suit originally in January, 1932, to recover total and permanent disability benefits under a contract of war risk term insurance in the sum of $10,000, issued to him while in the military service of the United States between October 5, 1917, and July 29, 1919. (R. 2–5.) In April 1936, he filed an amended complaint containing two counts. The first was similar in substance to the original complaint (R. 11–13) and was later expressly aban-

doned (R. 20). By the second count, on which the case was tried, respondent sought to recover total and permanent disability benefits, together with unearned premiums, under a five-year convertible term policy of United States Government life insurance. (R. 13–15.) It was alleged in this count, and denied by the Government's answer, that he had become totally and permanently disabled on or prior to January 26, 1931, while the latter policy was in force. (R. 9, 14.)

It was established by admission in the Government's answer and stipulation of the parties that the original war risk term insurance contract was issued to the respondent on January 31, 1918, and lapsed for nonpayment of premiums on August 31, 1919; that on June 28, 1927, it was reinstated and converted into the five-year convertible term policy (effective July 1, 1927, R. 9) which, in turn, lapsed for nonpayment of the premium due July 1, 1932; and that the respondent filed a claim for permanent and total disability benefits under the latter policy on January 6, 1931 (R. 20).[1]

At the close of the evidence, the Government moved the court to direct a verdict in its favor upon the grounds: (1) that respondent failed to adduce substantial evidence that he "became" totally and permanently disabled while his contract of insur-

[1] Presumably this was an informal claim. Formal claim (Veterans' Administration Form No. 579) was filed in the Veterans' Administration on May 2, 1931. (R. 21.)

ance was in force, and (2) that if there were proof of total and permanent disability, such disability had existed since 1924, and that the policy in suit did not "come into being" until 1927. The court thereupon reserved its ruling upon the motion (R. 44), and acceded to the request of counsel for the Government that the record should show an exception in the event the motion were overruled. The bill of exceptions then recites that the motion was overruled, and that the Government expressly excepted to this ruling. (R. 45.) It also recites that there was a similar ruling and exception after the verdict. (R. 48.)[2]

The court instructed the jury that if respondent became totally and permanently disabled after June

[2] It was urged in the Circuit Court of Appeals that there was no substantial evidence that the insured "became" totally and permanently disabled during the period of insurance protection, but it was not disputed that the evidence justified the finding which the jury made that the insured was totally and permanently disabled prior to the issuance of the contract sued upon. The Circuit Court of Appeals, presumably because of its holding that disability benefits were payable if total permanent disability existed during the life of the contract, did not review the evidence for the purpose of determining whether the Government's motion for a directed verdict should have been granted. The question as to which review is here sought was presented by exceptions taken to other rulings in the trial court. If this Court should determine that a decision upon the evidence in connection with the Government's motion for a directed verdict is necessary, it is assumed that the case will be remanded to the Circuit Court of Appeals for that purpose. Cf. *Earwood* v. *United States*, 294 U. S. 695.

1, 1932, he could not recover because the policy lapsed at that time [3] (R. 47), but refused the request of counsel for the Government for a further instruction to the effect that respondent also could not recover if he became totally and permanently disabled before "July 27th, 1927".[4] The trial judge stated, in substance, that he had not had an opportunity to study the policy on this point; that he would, therefore, ask the jury simply to fix the date of permanent and total disability, and would himself later determine any question of law which might be presented by their finding. (R. 47.) Counsel for the Government asked: "May I make my record on that?", and the court replied in the affirmative. (R. 48.) The jury rendered a verdict in favor of respondent, but fixed "the date" of commencement of total and permanent disability "at the latter part of 1924." (R. 48.)

Thereafter, the Government made a motion for judgment on the verdict, and a separate motion for a new trial and in arrest of judgment. These motions were overruled, and exceptions were duly noted. (R. 17–18.) Motions for a new trial and in arrest of judgment were again made, overruled, and excepted to, subsequent to the entry of judgment for the respondent. (R. 19.) The judgment

[3] The court evidently overlooked the fact that the parties had stipulated July 1, 1932, as the date of lapse. (R. 20.)

[4] Counsel for the Government evidently meant to say June 28, 1927, which was the date of the reinstatement and conversion of the insurance. (R. 20.)

awarded respondent the sum of $3,737.50, representing accrued monthly installments of insurance benefits from January 25, 1931,[5] to May 25, 1936, less the sum of $1,198.49, representing a lien with interest which the Government, in its answer (R. 9), claimed against the policy in the event of a recovery (R. 18–19).

An appeal was duly prayed (R. 49), allowed (R. 53), and perfected (R. 49–52, 54–55), and the bill of exceptions settled and signed within time (R. 18, 48, 53). Error was assigned to the trial court's rulings, among others, (a) in refusing to instruct the jury to return a verdict for the Government for lack of substantial evidence that respondent became totally and permanently disabled during the life of the insurance policy sued upon; (b) in refusing the request of counsel for the Gov-

[5] The record does not disclose the reason for the selection of this date. The jury fixed the date of the total permanent disability of the insured "at the latter part of 1924" (R. 48); the policy was issued effective July 1, 1927 (R. 9), on application of June 28, 1927 (R. 20). The petition, as amended (R. 14), alleged that "afterwards and prior to, to-wit, January 26, 1931, he became totally and permanently disabled," and that "thereafter on, to-wit, the 25th day of May, 1931, made due proof of his total permanent disability." None of these dates has any apparent relation to the beginning date of the award in the judgment. The policy provisions Paragraph 11 (Appendix, *infra*, pp. 55–56), as to due proof of total permanent disability, restrict recovery after total permanent disability to a date "not exceeding six months prior to receipt of due proof of such total permanent disability."

ernment to instruct the jury that if they found from the evidence that the respondent became so disabled prior to July 27 (June 28), 1927, when the policy was issued, they should return a verdict for the Government (Assignment of Errors Nos. 1 and 2, R. 50); and (c) in not holding, as a matter of law, that the respondent could not recover because all of his evidence, if taken to be true and if amounting to proof of total and permanent disability, indicated that he was so disabled before the existence of the policy (Assignment of Error No. 5, R. 52).

The Circuit Court of Appeals affirmed the judgment of the trial court. (R. 60.) The court conceded in the opinion that the risk assumed by the policy in suit "did not cover disabilities existing prior to the date of the policy," but stated that it "covered future total and permanent disability benefits—monthly disability payments accruing after, not before, the issuance of the policy." (R. 60.) It held (concededly contrary to the weight of authority), that the incontestable clause contained in the policy, pursuant to the statute,[6] prevented the Government from denying liability on the ground that the policy did not cover a disability which occurred prior to its inception. (R. 68.)

It also held that, apart from the incontestable clause, the Government was estopped by the facts

[6] Section 307, World War Veterans' Act, 1924, as amended July 3, 1930 (Appendix, *infra*, pp. 46–47).

relating to the reinstatement and conversion of the insurance to set up the defense in question. A third ground for affirming the judgment was suggested in the opinion to be the failure of the Government "to include all the evidence in its bill of exceptions". In this connection, it was stated that the policy had been omitted, and particular reference was made to the omission of the incontestable clause. The court stated, however, that it assumed "that the statute defines and fixes the incontestable provisions of the policy in question", and that this omission was, therefore, not "the sole basis" of its decision. (R. 60.)

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding the Government liable to pay total and permanent disability benefits under a United States Government life insurance policy, converted from a reinstated contract of war risk term insurance, on account of a total and permanent disability which had its inception prior to the reinstatement and conversion of the insurance.

2. In holding that the Government was prevented from asserting that the subsequent policy did not cover such a disability by the provisions in Section 307 of the World War Veterans' Act, 1924, as amended July 3, 1930, to the effect that all policies of insurance issued by the Government shall be incontestable from the date of issuance, reinstatement, or conversion.

3. In holding that, aside from the statute, the Government was estopped from asserting such a defense in the instant case by the acts of its officials.

4. In holding (if it did so hold) that the omission of portions of the policy from the bill of exceptions precluded consideration of the Government's motion for a directed verdict.

5. In declining to reverse the judgment of the District Court upon the record proper, apart from the bill of exceptions.

6. In affirming the judgment of the District Court.

SUMMARY OF ARGUMENT

I

Congress is presumed to have used the word "insurance" in the statutes authorizing the insurance here involved in its usual and ordinary meaning as protection against a contingent future loss, for there is no evidence of any other intention, and therefore total permanent disability occurring prior to such insurance cannot serve to mature the policy.

It is to be inferred from the fact that Congress has expressly authorized the payment of benefits for death or total permanent disability occurring at a time when insurance was not in force in two classes of cases, that no other exceptions were intended.

Moreover, the statutory requirement that an applicant for reinstatement furnish proof that he is

not totally and permanently disabled is inconsistent with an intention to provide for disability payments under a reinstated contract for a pre-existing total permanent disability.

Furthermore, the fact that Congress specifically provided in Section 307, World War Veterans' Act, as amended July 3, 1930, that an insured might recover payments for total permanent disability occurring while insurance was in force, despite a subsequent lapse and reinstatement, and failed to provide for payments under the reinstated insurance for total permanent disability occurring prior to such reinstatement, is evidence, we think, that such payments were not intended. Especially is this true since the legislation authorizing the payment of disability benefits under an earlier policy despite subsequent reinstatement was enacted for the express purpose of overcoming judicial rulings denying such recovery, while other decisions, presumably equally well known to Congress, holding that there could be no recovery for total permanent disability existing prior to the insurance on which claim was made, were not the subject of legislation.

The view that the insurance here involved provided protection only against subsequent death or total permanent disability is consistent with the final holding in all decided cases presenting the point, except the instant case, and even in this case the court below states in its opinion that "the risk

did not cover disabilities existing prior to the date of the policy."

II

The incontestable clause provided in Section 307, World War Veterans' Act, as amended July 3, 1930, does not preclude the Government from denying liability upon the insurance in this case, as was held by the court below.

The incontestable clause merely protects the insurance against any attack upon its validity and has no application where, as here, the validity of the insurance is undisputed, and the claim under it is denied solely on the ground that the contingency upon which the claim was based did not occur while the policy was in force and therefore was not insured against. Comparable clauses in commercial policies have been so construed in numerous decisions of state and federal courts.

A like judicial construction had been given to the language of Section 307 as worded prior to the amendment of July 3, 1930. The amendment made no change designed to alter this construction and, except in the instant case, such a construction has been given to the Section, as amended, in all decided cases. These later decisions are consistent with the established rule that a reenactment of legislation having a known judicial construction is presumed to adopt such construction.

While we think that the incontestable provision of the statute, as amended July 3, 1930, is clear on its face and provides no support for the conclusion of the court below, the Committee Reports, if resort to them is permissible, will show that the amendment was for the sole purpose of overcoming certain decisions of the Comptroller General which had declared reinstated insurance invalid under certain circumstances of administrative re-rating.

III

The Government is not estopped to deny respondent's claim for benefits for total permanent disability occurring prior to the reinstatement of the insurance, as the court below held.

The respondent was granted insurance against prospective loss upon proof, required by the statute, that he was not totally and permanently disabled. The Government accepted the proof and has not at any time repudiated that agreement, on which the insurance was granted. It does not assert that he was totally and permanently disabled prior to the grant of insurance. It does not dispute the respondent's right to recover benefits for total permanent disability if such total permanent disability is proved to have occurred while the insurance was in force. Since it has not changed its position in any respect, either to its own advantage or the respondent's detriment, and merely denies liability upon any claim by the respondent

inconsistent with the agreed basis of the insurance, there is we submit no basis for holding it estopped.

The Government's position in this respect is consistent with the administrative practice, which has recognized liability in cases in which a failure to do so would have involved a repudiation of the agreement on which the insurance was based.

IV

The omission from the bill of exceptions of the incontestable clause of the policy was not a ground for affirmance of the judgment as the opinion of the court below suggests, since the rights of the parties in this respect were necessarily governed by the amendment to Section 307 of July 3, 1930, which is retroactive in effect and supersedes the clause contained in contracts issued prior thereto. Therefore, we submit that the bill contained all of the evidence necessary for consideration of the questions presented and thereby conformed to Paragraph 2, Rule 9 of the Circuit Court of Appeals for the Seventh Circuit.

ARGUMENT

I

THE STATUTE UNDER WHICH THIS CONTRACT WAS ISSUED AUTHORIZED INSURANCE PROTECTION ONLY, AND DID NOT CONTEMPLATE LIABILITY FOR OTHER THAN PROSPECTIVE LOSSES

The legislation relating to war risk and United States Government life insurance as embodied in both the War Risk Insurance Act and the World

War Veterans' Act indicates clearly, we think, that contracts of insurance were authorized for the protection of the insured against subsequent loss by total permanent disability or death, and that Congress did not intend in such contracts to authorize an assumption of liability for a loss already incurred.

The insurance sued upon was authorized by Section 300, World War Veterans' Act (Appendix, *infra,* pp. 40–42). This section corresponded in essential respects with Section 400, War Risk Insurance Act (Appendix, *infra,* p. 37), containing the first provision for the issuance by the United States of insurance against death and total permanent disability.

Section 400, War Risk Insurance Act, provided:

> That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided.

Ordinarily "insurance" connotes protection against a contingent future loss, although in certain cases of marine insurance the parties recognize the possibility that the loss has occurred and specifically assume that risk. *Couch on Insurance,* Vol. 6, Sec. 1330. See also *Mayer* v. *Insurance Co.,* 121 Pa. Super. 475; *Clardy* v. *Grand Lodge of Oklahoma,* 132 Okla. 165; *John Hancock Mutl. L. Ins. Co.* v. *Hicks,* 43 Ohio App. 242; *Barnes* v. *Aetna Life Ins. Co.* (Tex. Civil App., 1928) 7 S. W. (2d) 946; *Dees* v. *National Cas. Co.,* 17 Tenn. App. 183; *Peoria Life Ins. Co.* v. *Smith,* 47 F. (2d) 279 (E. D. Mich.). We submit that, as used in the statutes here in question, "insurance" was intended to have its usual and ordinary meaning. *Lincoln* v. *Ricketts,* 297 U. S. 373, 376; *De Ganay* v. *Lederer,* 250 U. S. 376, 381. Certainly this was true as to the coverage against death.

The absence of Congressional intention to authorize payment of insurance benefits for total and permanent disability not occurring during the life of an insurance contract, may be inferred not only from an absence of language to support such a departure from usual insurance practice, but also from the fact that Congress specifically authorized the payment of benefits in two classes of cases for death or total permanent disability occurring at a time when no insurance was in force.

Section 401 of the War Risk Insurance Act (Appendix, *infra,* pp. 37–38) authorized the payment of

benefits (called automatic insurance) for loss incurred prior to application for insurance, and during a reasonable time allowed for making application. Cf. *United States* v. *Jackson,* No. 199, October Term, 1937, decided by this Court January 17, 1938. This section provided in part:

> Any person in the active service on or after the sixth day of April, nineteen hundred and seventeen, who, while in such service and before the expiration of one hundred and twenty days from and after such publication, becomes or has become totally and permanently disabled or dies, or has died, without having applied for insurance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of $25 each. If he shall die either before he shall have received any of such monthly installments or before he shall have received two hundred and forty of such monthly installments, then $25 per month shall be paid to his wife from the time of his death and during her widowhood, or to his child, or widowed mother if and while they survive him: * * *.

Section 408 of the War Risk Insurance Act (Appendix, *infra,* pp. 39–40) authorized the payment of benefits for loss occurring after insurance had lapsed in certain cases where the policy might have been kept in force if the Government had made prompt payment of compensation due the insured.

(Comparable provisions were later embodied in Section 305, World War Veterans' Act, Appendix, *infra*, p. 45–46; cf. *United States* v. *Madigan*, 300 U. S. 500.) Section 408 provided in part:

> That where any soldier has heretofore allowed his insurance to lapse, while suffering from wounds or disease suffered or contracted in line of service, and was at the time he allowed his said policy to lapse entitled to compensation on account thereof in a sum equal to or in excess of the amount due from him in premiums on his said insurance, and has since died from said wounds or disease without collecting or making claim for said compensation, or being allowed to reinstate his said policy on account of his physical condition, then and in that event said policy shall not be considered as lapsed, and the Veterans' Bureau is hereby authorized and directed to pay to the beneficiaries of said soldier under said policy the amount of said insurance less the premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law.

The foregoing sections of the War Risk Insurance Act and the comparable sections of the World War Veterans' Act contain the only express provisions in the statutes authorizing the payment of benefits for loss incurred while insurance was not in force. We submit that they are properly to be construed as exclusive of any implication that ben-

efits for such loss are to be paid under any other circumstances.

Moreover, the statutory provisions for the reinstatement of insurance (Section 408, War Risk Insurance Act, Appendix, *infra,* pp. 39–40; Section 304, World War Veterans' Act, Appendix, *infra,* pp. 44–45), while extending the privilege of reinstatement to disabled veterans, expressly required proof that the applicant was *not totally and permanently disabled,* and are further evidence, we think, that an assumption of liability for loss already incurred was not intended.

Section 307, World War Veterans' Act (Appendix, *infra,* pp. 46–47), is especially significant for it specifically authorizes the payment of a claim under a contract of insurance existing prior to a reinstatement and conversion upon a finding that the insured is so entitled under such prior contract and upon a surrender of the subsequent contract. When this legislation was enacted it had long been known that suits on veterans' insurance contracts were being defended on the ground that there could be no recovery under a contract of insurance for total permanent disability antedating its issuance. An opinion of the Attorney General, dated July 18, 1919 (31 Op. A. G. 534) states:

> In cases which have heretofore arisen in the courts, I have advised the bureau that the insurance is collectible if applied for within the time allowed and before either total permanent disability or death has ac-

> tually occurred, and hence is not defeated by the fact that the applicant was mortally ill. However, what is provided for is a contract of insurance against something that may happen and not of indemnity for something which has already happened. If no application has been made when death occurs, of course there is no insurance; and if total permanent disability has been incurred, a future application for insurance can not cover it.

This defense, that the insurance did not cover a prior loss, had been sustained by the courts in two reported opinions (*Jordan* v. *United States,* 36 F. (2d) 43 (C. C. A. 9th); *Anderson* v. *United States,* 36 F. (2d) 45 (C. C. A. 9th)), and in several unreported opinions of District Courts (*Nold* v. *United States* (W. D. Mo.) July 1928; *Wilson* v. *United States* (W. D. Mo.) June 1929; *Oliver* v. *United States* (Arizona) August 1928).

Moreover, in other cases it had been held that a reinstatement or conversion of insurance constituted an estoppel against any claim that an earlier, superseded contract had matured. *Stevens* v. *United States,* 29 F. (2d) 904 (C. C. A. 8th); *United States* v. *Buzard,* 33 F. (2d) 883 (C. C. A. 9th); *United States* v. *Golden,* 34 F. (2d) 367 (C. C. A. 10th); *United States* v. *Acker,* 35 F. (2d) 646 (C. C. A. 5th); *United States* v. *Schweppe,* 38 F. (2d) 595 (C. C. A. 8th); *Duggan* v. *United States,* 36 F. (2d) 804 (Minn.). Congress apparently considered that a veteran, not entitled

under a contract of insurance to disability benefits for total permanent disability antedating its issuance, should be permitted to recover under any earlier contract if one of the contingencies insured against had occurred during the life of such earlier contract and enacted this legislation to overcome the decisions last cited. Cf. *United States* v. *Arzner*, 287 U. S. 470.

If Congress had considered that any reason existed for overcoming the holdings that no risk attached under an existing contract for total and permanent disability antedating its issuance, it seems reasonable to conclude that Section 307 would have contained some express provision enlarging the coverage to include losses incurred prior to the issuance of the contract on which the claim is based.

The effect of the judgment of the courts below is to interpret the statute as authorzing the issuance of matured contracts of insurance. The statutory requirement that an applicant furnish proof that he is not totally and permanently disabled, the statutory provisions relating to premium payments, and the regulations requiring due proof in support of a claim for disability benefits, are all effectively nullified, for evidence of the physical condition of the same person becomes satisfactory evidence that as an applicant for reinstatement he is not, and that as an insured he is, totally and permanently disabled as of the same date. The payment of disability benefits by the insurer is from the very out-

set substituted for the payment of premiums by the insured.

We submit that Congress has not, in any provision of the statutes, authorized the payment of insurance benefits for total permanent disability existing prior to any contract of insurance on which the claim is made; that the terms and conditions of the contracts as embodied in the regulations (See Appendix, *infra,* pp. 48–57) and the administrative practice (See letter to the Solicitor General from the Administrator of Veterans' Affiairs, dated October 6, 1937, Appendix, *infra,* pp. 58–67) have not[7] and could not enlarge the coverage provided by the statute (Cf. *Miller* v. *United States,* 294 U. S. 435; rehearing denied, 294 U. S. 734); and that the courts have correctly held, as the opinion of the court below concedes in its language, that "the risk did not cover disability existing prior to the date of the policy." (R. 60.) See *Jordan* v. *United States,* 36 F. (2d) 43 (C. C. A. 9th); *Anderson* v. *United States,* 36 F. (2d) 45 (C. C. A. 9th); *Hicks* v. *United States,* 65 F. (2d) 517 (C. C. A. 4th); *United States* v. *Kaminsky,* 64 F. (2d) 735 (C. C. A. 5th);[8] *United States* v. *Stevens,* 64 F.

[7] The language of the converted insurance contract (Appendix, *infra,* p. 53) does not expressly exclude total permanent disability occurring prior to insurance protection, as did the language of the original term contract (Appendix, *infra,* p. 50). We see no reason to believe that the Administrator thereby intended to enlarge the statutory coverage of the policy. Certainly he had no power to do so.

[8] The decision in *United States* v. *Chandler,* 77 F. (2d) 452 (C. C. A. 5th), cited in the opinion of the court below,

(2d) 853 (C. C. A. 8th); *United States* v. *McIver,* 77 F. (2d) 208 (C. C. A. 4th); *Schmidt* v. *United States,* 63 F. (2d) 390 (C. C. A. 8th); *Davis* v. *United States,* 57 F. (2d) 871 (E. D. Va.); *Nall* v. *United States,* 8 F. Supp. 69 (S. D. Miss.); *Stavros* v. *United States,* 3 F. Supp. 213 (W. D. Wash.).

II

DENIAL OF LIABILITY ON THE GROUND THAT THE LOSS INSURED AGAINST HAS NOT OCCURRED IS NOT A CONTEST WITHIN THE MEANING OF THE INCONTESTABLE CLAUSE IN SECTION 307, WORLD WAR VETERANS' ACT

The court below conceded that a disability existing prior to the inception of the policy was not covered by it (R. 60) but held, in effect, that the Government is precluded from denying liability to pay benefits under the policy, because of such disability, by the clause in Section 307, World War Veterans' Act, 1924, as amended July 3, 1930 (Appendix, *infra,* pp. 46–47), which provides in pertinent part that—

> policies of insurance heretofore or hereafter issued, reinstated, or converted shall be incontestable from the date of issuance,

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rested upon a finding that there was no substantial evidence that the insured was totally and permanently disabled at any time. There was, therefore, no reason for application of the court's earlier ruling in the *Kaminsky* case. It is submitted that there is no basis for any contention that the decision in the *Chandler* case overruled the earlier holding in the *Kaminsky* case.

> reinstatement, or conversion, except for fraud, nonpayment of premiums, or on the ground that the applicant was not a member of the military or naval forces of the United States, * * *.

It is submitted that the foregoing clause has no application where, as here, the validity of the policy is not questioned and liability under it is denied solely on the ground that a loss has not occurred during the period of insurance protection.

The incontestable clauses of commercial contracts have been construed in numerous decisions as precluding any attack upon the validity of the policies themselves but not as precluding the denial that claims arose under the policies.

The distinction between a denial that a policy covers the loss upon which a claim is based and a contest prohibited by a provision of the policy itself is clearly drawn in *Matter of Met. Life Ins. Co.* v. *Conway,* 252 N. Y. 449. See also *Mayer* v. *Insurance Co.,* 121 Pa. Super. 475, in which are collected numerous authorities to the same effect.

The Federal courts have likewise held that the incontestable clauses of commercial contracts are to be so interpreted. *Mack* v. *Connecticut General Life Ins. Co. of Hartford,* 12 F. (2d) 416, 418 (C. C. A. 8th), certiorari denied, 271 U. S. 687; *Sanders* v. *Jefferson Standard Life Ins. Co.,* 10 F. (2d) 143 (C. C. A. 5th); *Flannagan* v. *Provident Life & Accident Ins. Co.,* 22 F. (2d) 136 (C. C. A. 4th);

Hearin v. *Standard Life Ins. Co.*, 8 F. (2d) 202, 206 (E. D. Ark.); *Wright* v. *Philadelphia Life Ins. Co.*, 25 F. (2d) 514, 515 (E. D. S. C.).

Prior to the amendment of July 3, 1930, Section 307, World War Veterans' Act (Appendix, *infra*, p. 46), read in pertinent part as follows:

> All such policies of insurance heretofore or hereafter issued shall be incontestable after the insurance has been in force six months from the date of issuance or reinstatement, * * *.

and had been judicially construed, in accordance with the construction of comparable clauses in commercial policies, as not enlarging the coverage of the contracts to which it related. *Jordan* v. *United States*, 36 F. (2d) 43 (C. C. A. 9th), *supra*; *Anderson* v. *United States*, 36 F. (2d) 45 (C. C. A. 9th), *supra*. Cf. 31 Op. A. G. 534, *supra*, pp. 18–19, cited with approval in the *Jordan* case.

Certainly no intention to overcome the judicial construction of the language of Section 307, as it was worded prior to July 3, 1930, is disclosed in the amendment of that date which merely made the insurance incontestable from its effective date rather than six months later, and the judicial construction of the language of the incontestable clause subsequent to the amendment accords with that given prior to it. *Hicks* v. *United States*, 65 F. (2d) 517 (C. C. A. 4th); *United States* v. *Kaminsky*, 64 F. (2d) 735 (C. C. A. 5th); *United States* v. *Stevens*,

64 F. (2d) 853 (C. C. A. 8th); *United States* v. *McIver*, 77 F. (2d) 208 (C. C. A. 4th); *Schmidt* v. *United States*, 63 F. (2d) 390 (C. C. A. 8th); *Davis* v. *United States*, 57 F. (2d) 871 (E. D. Va.); *Nall* v. *United States*, 8 F. Supp. 69 (S. D. Miss.); *Stavros* v. *United States*, 3 F. Supp. 213 (W. D. Wash.). These decisions, after the amendment of July 3, 1930, are consistent with the established rule of statutory construction that the reenactment of legislation having a known judicial construction is presumed to adopt such construction. *Johnson* v. *Manhattan Ry. Co.*, 289 U. S. 479, 500; *United States* v. *Falk*, 204 U. S. 143, 152.

A statute so clear on its face may be considered not to permit resort to the Committee Reports to determine its meaning (*Caminetti* v. *United States*, 242 U. S. 470), but if resort thereto is permitted these Reports (Appendix C, *infra*, pp. 68–69) will show that the amendment was for the express purpose of overcoming certain decisions of the Comptroller General. These decisions had denied payment of approved insurance claims for death or total permanent disability benefits in any case in which either death or total permanent disability had occurred within six months after reinstatement if there had been made at any time thereafter an administrative finding of total permanent disability prior to the reinstatement. The subsequent retroactive finding of total permanent disability in such cases was held to invalidate the re-

instatement. See *Forest Reed Hill,* 7 Comp. Gen. 431; *Frank Boehler,* 7 Comp. Gen. 248; *Philips McNish,* 7 Comp. Gen. 551; *Marion Artley,* 8 Comp. Gen. 387; *Mabray W. Woodall,* 9 Comp. Gen. 291; *Andy Stevens,* 7 Comp. Gen. 642. That the position of the Comptroller General was based entirely upon the right to contest the policy is clear from his decision in the case of *Joseph M. Giblin,* 8 Comp. Gen. 174, in which it was held that a retroactive rating of total permanent disability antedating insurance protection made after the period for contest had expired did not invalidate the policy and that benefits were payable by reason of such rating. The amendment of July 3, 1930, was thus clearly sufficient to overcome the effect of the decisions of the Comptroller General, but had no effect upon the Court decisions which had theretofore denied recovery for loss incurred prior to insurance protection and which were not based on the right to contest the policy (*supra,* pp. 24–25).

We submit, therefore, that the incontestable clause as worded in the amendment of July 3, 1930, does not have and was not intended to have the meaning which has been given to it by the court below; that the otherwise consistent judicial interpretation before and after the amendment of July 3, 1930, gives to the incontestable clause its proper meaning, and that it has no application where, as here, the validity of the insurance is not contested and the sole basis of denial is that the loss upon which the claim is based did not occur during the period of insurance protection.

III

THERE IS NO ESTOPPEL AGAINST THE DENIAL OF THE RESPONDENT'S CLAIM

The court below held that the Government was estopped to deny liability in this case because of the facts relating to the reinstatement and conversion of the insurance. (R. 59.) The statement of facts, made by the court as a basis for so holding, may be abbreviated in its own language as follows (R. 59):

> * * * the Government was better informed of the state of the physical and mental condition of the insured than Patryas was himself. * * * the insured, who occupied somewhat the status of a ward, was advised to apply for and secure reinstatement of the old war risk insurance policy. The ward consented to the payment of all premiums he had failed to pay since his discharge from service, through the imposition of a substantial lien against the reinstated policy. * * * After the reinstatement took place the insured, again apparently acting upon the advice of the Government, surrendered this insurance and took out the five year converted insurance policy. * * *
>
> Insured waived his right to claim such benefits [total permanent disability benefits under the earlier contract] and in return the Government reinstated the policy. The insured also waived his right to assert the absence of premiums due and consented to the creation of a lien equal to such premiums.

> The Government was again the gainer. [Matter in brackets ours.]

The opinion correctly states that the respondent "consented to the payment of all premiums he had failed to pay since his discharge from service, through the imposition of a substantial lien against the reinstated policy." (R. 59.) This was required by the statute as a condition to the reinstatement of insurance upon respondent's application. (Section 304, World War Veterans' Act, Appendix, *infra,* pp. 44–45.) The reinstatement according to the conditions of the statute was voluntary and by it the insured obtained insurance protection which he had theretofore lacked. Since by the reinstatement and contemporaneous conversion (likewise required by statute—Section 301, World War Veterans' Act, Appendix, *infra,* pp. 42–43) his position was improved, it is immaterial whether, as suggested by the court below (R. 59), Government agents induced the reinstatement and conversion and that the Government was in a better position than he to know the condition of his health.

The court below was in error in its statement (R. 59) that the respondent could not claim benefits under his original contract because of the subsequent reinstatement. Section 307, World War Veterans' Act (Appendix, *infra,* pp. 46–47), specifically authorizes a claim or suit on an earlier contract despite the existence of a subsequent contract and permits the recovery of payments thereunder upon a showing that the claimant became totally

and permanently disabled while the earlier contract was in force. See *United States* v. *Arzner*, 287 U. S. 470.

We submit that the Government has not at any time departed from the position to which it agreed when the respondent was granted the reinstated contract of insurance on which his claim is based, and that there is no basis for holding the Government estopped to deny that the contingency insured against occurred during the life of the reinstated insurance.

The reinstatement was obtained in June 1927, effective July 1, 1927. (R. 9, 20.) Prior to the reinstatement, the respondent was without Government insurance protection, as the earlier contract had lapsed August 31, 1919, for nonpayment of premiums. (R. 20.) So far as the record discloses, he had then made no claim under the lapsed contract and could not have sustained such claim. He was then disabled (R. 21), and presumably therefore could not have obtained commercial insurance. He was entitled to reinstatement of insurance under the World War Veterans' Act only upon proof satisfactory to the Director that he was not then totally and permanently disabled. (See Section 304, World War Veterans' Act, Appendix, *infra*, pp. 44–45.)

As the result of the reinstatement the respondent obtained protection against total permanent disability which might thereafter occur, the prospect of which was greatly increased by his recognized

disability (R. 21), and this protection is not defeated by the requirement that he prove that such subsequent loss has in fact occurred.

The reinstatement of insurance under Section 304, World War Veterans' Act, or the like provisions of Section 408, War Risk Insurance Act, upon the condition that an applicant be not totally and permanently disabled, has been characterized as an agreement of the parties, which neither may repudiate. *United States* v. *Buzard,* 33 F. (2d) 883 (C. C. A. 9th). The Government has certainly not repudiated the agreement in the instant case by denying that the insured is totally and permanently disabled (R. 8, 44), or by insisting that he prove that the loss which he claims occurred subsequent to the grant of insurance protection (R. 44). In fairness to the respondent it should be noted that in his petition he did not claim benefits for total permanent disability antedating the contract sued upon, but alleged that "afterwards and prior to, to-wit, January 26, 1931, he became totally and permanently disabled * * * so that said insurance matured on and prior to said January 26, 1931". (R. 14.)

It was held in *United States* v. *Buzard,* 33 F. (2d) 883 (C. C. A. 9th), *supra,* decided prior to the amendment of Section 307, World War Veterans' Act, on July 3, 1930 (*infra,* pp. 46–47), that a reinstatement of insurance precluded a claim that an earlier contract of such insurance had matured. The court therein stated (pp. 885–886):

> Total and permanent disability is often a question of great uncertainty and frequently it is incapable of conclusive proof. With all the ascertainable facts and circumstances before them, both laymen and scientific experts are sometimes at variance in their conclusions. But in the practical administration of the law junctures arise where it becomes necessary to make a determination for the future guidance of the parties in the performance of their obligations and in the assertion of their rights. If at such time the insured and the Government officers with all available information before them, in good faith agree upon resolving what both sides recognize as a doubtful issue, one way or the other, and upon the assumption that the status so agreed upon is correct, enter into a new contract to supersede the old and both thereafter act pursuant thereto, it would lead to intolerable confusion and often result in injustice, if now one, and then the other, party may, when his interests so dictate, repudiate the contract with the contention that the determination of the doubtful issue was erroneously made. The case would be not unlike an ordinary compromise where parties being in doubt as to their rights and obligations make a binding adjustment by mutual agreement.

See also: *Stevens* v. *United States,* 29 F. (2d) 904 (C. C. A. 8th); *United States* v. *Kusnierz,* 33 F. (2d) 887 (C. C. A. 9th); *United States* v. *Cross,* 33 F. (2d) 887 (C. C. A. 9th); *United*

States v. *Allen,* 33 F. (2d) 888 (C. C. A. 9th); *United States* v. *Schweppe,* 38 F. (2d) 595 (C. C. A. 8th); *United States* v. *Andrews,* 43 F. (2d) 80 (C. C. A. 10th).

Because of the holdings in these cases Section 307, World War Veterans' Act, was amended July 3, 1930 (Appendix, *infra,* pp. 46–47), to provide expressly that an insured, without prejudicing any rights under a reinstated contract, might elect to claim or sue under any prior contract and recover benefits if found entitled. Cf. *United States* v. *Arzner,* 287 U. S. 470. Whether, subsequent to the foregoing amendment, the rights of the parties are to be determined solely by the true facts without regard to any contrary agreement at the time of reinstatement as is suggested in *United States* v. *Stevens,* 64 F. (2d) 853, 857 (C. C. A. 8th), or, whether the estoppel stated in *Buzard* and other like cases, *supra,* operates except as the statute specifically provides otherwise is immaterial for the purposes of this case.

If, as is implicit in the holding of the court below, the Government is estopped to assert that the respondent was totally and permanently disabled prior to the reinstatement of insurance in defending against a claim under the reinstated contract (and it has not so asserted)[9] the respondent would appear to be equally estopped[10] from claiming that he was totally and permanently disabled prior to the reinstatement for the purpose of the reinstated contract, or that he is entitled to dis-

ability benefits under the reinstated contract by reason of any such prior disability, if in fact he was so disabled.

If, as we believe to be clear, the statute authorized insurance against prospective loss only, an insured does not state a case entitling him to benefits under a reinstated contract unless he alleges that subsequent to the reinstatement he became totally and permanently disabled and he does not prove a case entitling him to benefits under a reinstated contract unless he proves that subsequent to the reinstatement he became totally and permanently disabled.

The verdict of the jury finding that the respondent became totally and permanently disabled in 1924 did not resolve the single issue of the case as to whether the insured became totally and permanently disabled during the life of the contract, unless it may be considered as establishing the negative. Certainly the verdict provides no basis for the judgment which has been entered in the respondent's favor.

The administrative practice, with reference to reinstated contracts, appears to have been consistently fair to the insured. Either the Director has

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[9] The court states in its opinion (R. 59): "In fairness to appellant it should be said that it did not concede permanent and total disability to exist at this time."

[10] In *Litchfield* v. *Goodnow*, 123 U. S. 549, it was stated by this Court that: "Estoppels to be good must be mutual." See also *United States Fidelity & Guaranty Co.* v. *Ettenheimer*, 70 Neb. 144.

refrained from finding the facts with reference to the disability of an insured prior to the finding upon which a reinstated contract is based, as is the present practice, with exceptions not here pertinent (Appendix, *infra,* p. 66), or he has denied to a retroactive re-determination any effect, so far as it is inconsistent with the finding on which a reinstatement is based, as was the practice for many years subsequent to the memorandum of December 16, 1921 (Appendix, *infra,* pp. 59–61). In either case the insured is protected from the consequences of a mere difference of opinion on the part of rating officers. Either practice is consistent in its results with the views expressed in *United States* v. *Buzard,* 33 F. (2d) 883 (C. C. A. 9th), *supra.*

But if the Government is equitably bound by the agreement of the parties relative to the degree of disability of the respondent at the time of reinstatement, the respondent is likewise bound. He may not hold the Government to the agreement while he claims benefits upon a verdict wholly inconsistent with it.

IV

THE QUESTION PRESENTED WAS PROPERLY RESERVED FOR APPELLATE REVIEW

The Circuit Court of Appeals stated, as a possible ground for affirmance of the judgment of the trial court, that the bill of exceptions did not contain all of the evidence, particularly the incontest-

able clause of the contract. However, the court expressly refrained from making this the sole basis of the decision and, it is submitted, this ground would not justify affirmance. The omission from the bill of exceptions of the incontestable clause was entirely justified for the reason that the rights of the parties in this respect were necessarily governed by the amendment to Section 307 of July 3, 1930 (Appendix, *infra,* pp. 46–47), which is retroactive in effect and supersedes the clause contained in contracts issued prior thereto (Appendix, *infra,* p. 55). Otherwise, the bill contained all evidence necessary for consideration of the questions presented, and thereby conformed to Paragraph 2, Rule 9 of the Circuit Court of Appeals for the Seventh Circuit (Appendix D, *infra,* p. 70). Cf. *Gunnison County Commissioners* v. *Rollins,* 173 U. S. 255, 261; *United States* v. *Densmore,* 58 F. (2d) 748 (C. C. A. 9th), certiorari denied, 287 U. S. 590.

But, in any event, the question of which review is here sought was properly presented by the record proper, apart from the bill of exceptions. The terms of the contract may be ascertained from statutory provisions and regulations which, considered in connection with the verdict and judgment, present the question of whether liability attaches for a loss sustained prior to reinstatement and conversion of the policy. Although error was not specifically assigned to the entry of judgment on the verdict, the point was adequately covered by

assignments of error relating to other rulings involving the same question as that presented by the entry of judgment. Cf. *United States* v. *Bernays*, 158 Fed. 792, 794 (C. C. A. 8th).

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed.

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JANUARY 1938.

APPENDIX A—STATUTES

The contract sued on was issued subject to the World War Veterans' Act of June 7, 1924, as amended, which superseded the War Risk Insurance Act of October 6, 1917, as amended. The sections of both of these Acts deemed pertinent to an understanding of the question in this case are set forth below:

Section 400, War Risk Insurance Act of October 6, 1917, c. 105, 40 Stat. 409:

> That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department of Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided.

Section 401, War Risk Insurance Act of October 6, 1917, c. 105, 40 Stat. 409:

> That such insurance must be applied for within one hundred and twenty days after enlistment or after entrance into or employment in the active service and before discharge or resignation, except that those per-

sons who are in the active war service at the time of the publication of the terms and conditions of such contract of insurance may apply at any time within one hundred and twenty days thereafter and while in such service. Any person in the active service on or after the sixth day of April, nineteen hundred and seventeen, who, while in such service and before the expiration of one hundred and twenty days from and after such publication, becomes or has become totally and permanently disabled or dies, or has died, without having applied for insurance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of $25 each. If he shall die either before he shall have received any of such monthly installments or before he shall have received two hundred and forty of such monthly installments, then $25 per month shall be paid to his wife from the time of his death and during her widowhood, or to his child, or widowed mother if and while they survive him: *Provided, however,* That not more than two hundred and forty of such monthly installments, including those received by such person during his total and permanent disability, shall be so paid; and in that event the amount of the monthly installments shall be apportioned between them as may be provided by regulations.

Section 404, War Risk Insurance Act of October 6, 1917, c. 105, 40 Stat. 410:

That during the period of war and thereafter until converted the insurance shall be term insurance for successive terms of one year each. Not later than five years after the date of the termination of the war as

declared by proclamation of the President of the United States, the term insurance shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty payment life, endowment maturing at age sixty-two and into other usual forms of insurance and shall prescribe the time and method of payment of the premiums thereon, but payments of premiums in advance shall not be required for periods of more than one month each and may be deducted from the pay or deposit of the insured or be otherwise made at his election.

Section 408, War Risk Insurance Act, as amended August 9, 1921, c. 57, Sec. 27, 42 Stat. 156–157:

In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant for insurance have been complied with, an application for reinstatement of lapsed or canceled yearly renewable term insurance or application for United States Government life insurance (converted insurance) hereafter made may be approved: *Provided,* That the applicant's disability is the result of an injury or disease or of an aggravation thereof suffered or contracted in the active military or naval service during the World War: *Provided further,* That the applicant during his lifetime submits proof satisfactory to the director showing the service origin of the disability or aggravation thereof and that the applicant is not totally and permanently disabled. As a condition, however, to the acceptance of an application for the reinstatement of lapsed or canceled

yearly renewable term insurance or United States Government life insurance (converted insurance) the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not lapsed, together with interest at the rate of 5 per centum per annum compounded annually on each premium from the date said premium is due by the terms of the policy: *Provided further,* That where any soldier has heretofore allowed his insurance to lapse, while suffering from wounds or disease suffered or contracted in line of service, and was at the time he allowed his said policy to lapse entitled to compensation on account thereof in a sum equal to or in excess of the amount due from him in premiums on his said insurance, and has since died from said wounds or disease without collecting or making claim for said compensation, or being allowed to reinstate his said policy on account of his physical condition, then and in that event said policy shall not be considered as lapsed, and the Veterans' Bureau is hereby authorized and directed to pay to the beneficiaries of said soldier under said policy the amount of said insurance less the premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law.

Section 300, World War Veterans' Act, as amended May 29, 1928, c. 875, Sec. 13, 45 Stat. 967:

In order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department protection

for themselves and their dependents, the United States, upon application to the bureau and without medical examination, shall grant United States Government life insurance (converted insurance) against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000 upon the payment of the premiums as hereinafter provided. Such insurance must be applied for within one hundred and twenty days after enlistment or after entrance into or employment in the active service and before discharge or resignation: *Provided,* That any member of the reserve forces whose application was accepted at a time when he was in attendance at a military or naval training camp or station, and from whom premiums were collected, and who becomes or has become totally and permanently disabled, or who dies or has died, shall be deemed to have made valid application therefor. This proviso shall not authorize the granting of more than $10,000 insurance to any one person: *Provided further,* That each officer and enlisted man of the Coast Guard who is serving on active duty at the time of the passage of this amendatory Act, or who subsequent thereto enters the Coast Guard service, shall be granted insurance in accordance with the terms of this section upon application within one hundred and twenty days of the passage of this amendatory Act, or date of enlistment or entry into the Coast Guard, whichever is the later date, and before retirement, discharge, or resignation.

* * * * *

The United States shall bear the expenses of administration and the excess mortality

and disability cost resulting from the hazards of war. The premium rates shall be the net rates based upon the American Experience Table of Mortality and interest at 3½ per centum per annum. This section, as amended, shall be deemed to be in effect as of June 7, 1924.

Section 301, World War Veterans' Act, as amended June 2, 1926, c. 449, 44 Stat. 686, provides in part:

> Except as provided in the second paragraph of this section, not later than July 2, 1927, all term yearly renewable insurance held by persons who were in the military service after April 6, 1917, shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty-payment life, endowment maturing at age sixty-two, five-year level premium term, and into other usual forms of insurance, and for reconversion of any such policies to a higher premium rate in accordance with regulations to be issued by the director, and shall prescribe the time and method of payment of the premiums thereon, but payments of premiums in advance shall not be required for periods of more than one month each, and may be deducted from the pay or deposit of the insured or be otherwise made at his election.
>
> All yearly renewable term insurance shall cease on July 2, 1927, except when death or total permanent disability shall have occurred before July 2, 1927: *Provided, however,* That the director may by regulation extend the time for the continuing of yearly

renewable term insurance and the conversion thereof in any case where on July 2, 1927, conversion of such yearly renewable term insurance is impracticable or impossible due to the mental condition or disappearance of the insured.

* * * * *

The insurance except as provided herein shall be payable in two hundred and forty equal monthly installments: *Provided,* That when the amount of an individual monthly payment is less than $5, such amount may in the discretion of the director be allowed to accumulate without interest and be disbursed annually. Provisions for maturity at certain ages, for continuous installments during the life of the insured or beneficiaries, or both, for cash, loan, paid up and extended values, dividends from gains and savings, and such other provisions for the protection and advantage of and for alternative benefits to the insured and the beneficiaries as may be found to be reasonable and practicable, may be provided for in the contract of insurance, or from time to time by regulations. All calculations shall be based upon the American Experience Table of Mortality and interest at 3½ per centum per annum, except that no deduction shall be made for continuous installments during the life of the insured in case his total and permanent disability continues more than two hundred and forty months. Subject to regulations, the insured shall at all times have the right to change the beneficiary or beneficiaries without the consent of such beneficiary or beneficiaries, but only within the classes herein provided.

* * * * *

Section 304, World War Veterans' Act, as amended July 2, 1926, c. 723, Sec. 15, 44 Stat. 799:

In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant for insurance have been complied with an application for reinstatement, in whole or in part, of lapsed or canceled yearly renewable term insurance or United States Government life insurance (converted insurance) hereafter made may be approved if made within one year after the passage of this amendatory Act or within two years after the date of lapse or cancellation: *Provided,* That the applicant's disability is the result of an injury or disease, or of an aggravation thereof, suffered or contracted in the active military or naval service during the World War: *Provided further,* That the applicant during his lifetime submits proof satisfactory to the director showing that he is not totally and permanently disabled. As a condition, however, to the acceptance of an application for the reinstatement of lapsed or canceled yearly renewable term insurance, where the requirements as to the physical condition of the applicant have not been complied with, or, for the reinstatement of the United States Government life insurance (converted insurance), the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not lapsed, together with interest at the rate of 5 per centum per annum, compounded annually, on each premium from the date said premium is due by the terms of the policy: *Provided further,* That where within one year of this amendatory Act all of the requirements for reinstatement of yearly renewable term insur-

ance under this section are complied with, except the payment of unpaid premiums with interest, and proof satisfactory to the director is furnished showing the applicant is unable to pay such premiums with interest or some part thereof, the application may be approved, and the amount of unpaid premiums with interest as provided in this section shall be placed as an interest-bearing indebtedness against the insurance, such indebtedness to bear interest at the rate of 5 per centum per annum, compounded annually, to be deducted in any settlement thereunder: *And provided further,* That no yearly renewable term insurance shall be reinstated after July 2, 1927.

Section 305, World War Veterans' Act, as amended May 29, 1928, c. 875, Sec. 17, 45 Stat. 971:

Where any person has heretofore allowed his insurance to lapse, or has canceled or reduced all or any part of such insurance, while suffering from a compensable disability for which compensation was not collected and dies or has died, or becomes or has become permanently and totally disabled and at the time of such death or permanent total disability was or is entitled to compensation remaining uncollected, then and in that event so much of his insurance as said uncollected compensation, computed in all cases at the rate provided by section 302 of the War Risk Insurance Act as amended December 24, 1919, would purchase if applied as premiums when due, shall not be considered as lapsed, canceled or reduced; and the the United States Veterans' Bureau is hereby authorized and directed to pay to said soldier, or his beneficiaries, as the case may be, the amount of said insurance less

the unpaid premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law: *Provided,* That insurance hereafter revived under this section and section 309 by reason of permanent and total disability or by death of the insured, shall be paid only to the insured, his widow, child or children, dependent mother or father, and in the order named unless otherwise designated by the insured during his lifetime or by last will and testament: *Provided further,* That compensation which is uncollectible by reason of the provisions of section 310 of the War Risk Insurance Act, as amended, or section 210 of the World War Veterans' Act, 1924, as amended, shall be considered as uncollected compensation for the purposes of this section.

Section 307, World War Veterans' Act, June 7, 1924, c. 320, 43 Stat. 627:

All such policies of insurance heretofore or hereafter issued shall be incontestable after the insurance has been in force six months from the date of issuance or reinstatement, except for fraud or nonpayment of premiums and subject to the provisions of section 23: *Provided,* That a letter mailed by the bureau to the insured at his last known address informing him of the invalidity of his insurance shall be deemed a contest within the meaning of this section: *Provided further,* That this section shall be deemed to be in effect as of April 6, 1917.

Section 307, World War Veterans' Act as amended July 3, 1930, c. 849, Sec. 24, 46 Stat. 1001:

All contracts or policies of insurance heretofore or hereafter issued, reinstated, or converted shall be incontestable from the date

of issuance, reinstatement, or conversion, except for fraud, nonpayment of premiums, or on the ground that the applicant was not a member of the military or naval forces of the United States, and subject to the provisions of section 23: *Provided,* That the insured under such contract or policy may, without prejudicing his rights, elect to make claim to the bureau or to bring suit under section 19 of this Act on any prior contract or policy, and if found entitled thereto, shall, upon surrender of any subsequent contract or policy, be entitled to payments under the prior contract or policy: *Provided further,* That this section shall be deemed to be effective as of April 6, 1917, and applicable from that date to all contracts or policies of insurance.

APPENDIX B — REGULATIONS AND ADMINISTRATIVE PRACTICE

By Section 13 of the War Risk Insurance Act (c. 105, 40 Stat. 399) and Section 5 of the World War Veterans' Act, as amended July 3, 1930 (c. 849, Sec. 1, 46 Stat. 991), the Director of the Veterans' Bureau (now Administrator of Veterans' Affairs) was authorized to make regulations not inconsistent with the provisions of the Act for the purpose of executing and enforcing the same. Also, by Section 402 of the War Risk Insurance Act (c. 105, 40 Stat. 409), he was authorized and directed to determine upon and publish the exact terms and conditions of the contract. Pursuant to this authority, the following regulations were promulgated:

Bulletin No. 1, Treasury Department, promulgated October 15, 1917, provided in pertinent part:

> TERMS AND CONDITIONS OF SOLDIERS' AND SAILORS' INSURANCE
>
> I, William C. De Lanoy, Director of the Bureau of War-Risk Insurance in the Treasury Department, pursuant to the provisions of section 402 of an act "to amend 'an act to authorize the establishment of a Bureau of War-Risk Insurance in the Treasury Department,' approved September 2, 1914, and for other purposes," approved October 6, 1917, hereby, on this 15th day of October, 1917, by direction of the Secretary

of the Treasury, determine upon and publish these full and exact terms and conditions of the contract of insurance to be made under and by virtue of the act:

* * * * *

3. That the insurance has been granted will be evidenced by a policy or policies issued by the bureau, which shall be in the following general form (which form may be changed by the bureau from time to time, provided that full and exact terms and conditions thereof shall not be altered thereby):

(Form of policy for $5,000.)

MILITARY AND NAVAL INSURANCE POLICY

No. 1.

Amount, $5,000.
Monthly installments, $28.75. Age, 25.

THE UNITED STATES OF AMERICA

TREASURY DEPARTMENT.

BUREAU OF WAR-RISK INSURANCE.

Under the authority granted by Congress in an act amending "An act entitled 'An act to authorize the establishment of a Bureau of War-Risk Insurance in the Treasury Department,' approved September 2, 1914, and for other purposes," approved October 6, 1917, and subject in all respects to the provisions of such act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with this policy, the application therefor, and the terms and conditions published under authority of the act, shall constitute the contract:

Hereby insures from and after the ____ day of ----------, 19__, John Doe, of Illinois, private, Company A, Third Infantry, conditioned upon the payment of premiums as herein provided, for the principal amount of $5,000, converted into monthly installments of $28.75 (the equivalent, when paid for 240 months, of the sum insured, on the basis of interest at the rate of 3½ per cent per annum) payable—

To the insured, if he/she, while this insurance is in force, shall become totally and permanently disabled, commencing with such disability as established by the award of the director of the bureau and continuing during such disability;

* * * * *

If the insured became totally and permanently disabled before this policy was applied for, it shall nevertheless be effective as life insurance, but not as insurance against such disability.

* * * * *

Premiums shall be paid monthly on or before the last day of each calendar month and will, unless the insured otherwise elects in writing, be deducted from any pay due him/her from the United States or deposit by him/her with the United States, and, if so to be deducted, a premium when due will be treated as paid, whether or not such deduction is in fact made, if upon the due date the United States owe him/her on account of pay or deposit an amount sufficient to provide the premium, provided that the premium may be paid within 31 days after the expiration of the month, during which period of grace the insurance shall remain in full force. If any premium be not paid,

either in cash or by deduction as herein provided, when due or within the days of grace, this insurance shall immediately terminate, but may be reinstated within six months upon compliance with the terms and conditions specified in the regulations of the bureau.

* * * * *

Not later than five years after the war this policy, if written request be made to the bureau therefor, accompanied by this policy, will be converted without medical examination into any form of insurance selected from among those that may be prescribed by regulations of the bureau. Such converted insurance will be at net premiums, computed in accordance with the American Experience Table of Mortality and 3½ per cent interest per annum and will provide for cash, loan, paid-up, and extended insurance values.

Wherefore the United States of America has caused this policy to be signed by the Secretary of the Treasury and by William C. De Lanoy, the Director of the Bureau of War-Risk Insurance, and countersigned by the registrar or an assistant registrar of the bureau.

W. G. McAdoo,
Secretary of the Treasury.

William C. De Lanoy,
Director of the Bureau of War-Risk Insurance.

Countersigned at Washington, D. C., this ____ day of _____ 19__.

Registrar.

* * * * *

These terms and conditions are subject in all respects to the provisions of such act and of any amendments thereto and of all regu-

lations thereunder now in force or hereafter adopted.

WILLIAM C. DE LANOY,
Director of the Bureau of War-Risk Insurance.

WASHINGTON, D. C., *October 15, 1917.*

The policy sued on (five-year convertible term policy, Veterans' Administration Form No. 745) contains the following provisions:

THE UNITED STATES OF AMERICA
HEREBY GRANTS INSURANCE

of ---------- Dollars.

TO

---------- (the Insured.)

This insurance is granted in consideration of and subject to the terms and conditions hereinafter set forth, and in further consideration of the payment of the monthly premium of $------ on the ---------- day of each month for a period of sixty (60) months and thereafter the monthly premium of $------ on the ---- day of each succeeding month during the lifetime of the Insured except as hereinafter provided. Receipt of the first premium is hereby acknowledged.

This insurance is payable in monthly installments of $------ (hereinafter called the monthly installment) in the event of the total permanent disability of the Insured or of his death, unless one of the Optional Settlements is selected as hereinafter provided, then, in the event of the death of the Insured this insurance is payable in accordance with the Optional Settlement so selected.

This insurance, subject to the beneficiary provisions hereof, is payable to ------, hereinafter called the beneficiary, ------.

Upon due proof of the total permanent disability of the Insured while this policy is in force, the monthly installments shall, except as hereinafter provided, be payable to the Insured and continue to be so payable during total permanent disability so long as he lives, and payment of all premiums due after receipt of such proof during total permanent disability shall be waived.

Upon due proof of the death of the Insured while this policy is in force, the monthly installments, without interest, which have accrued since the death of the Insured, the first installment being due on the date of the death of the Insured, shall be paid to the beneficiary designated, and thereafter the payment of the monthly installments shall continue to be so payable until two hundred and forty installments in all, including any paid to the Insured during his lifetime on account of total permanent disability, shall have been paid; but if two hundred and forty or more installments shall have been paid to the Insured on account of total permanent disability, no death benefit shall be payable.

* * * * *

1. Premiums are due and payable monthly in advance in legal tender of the United States of America to the Treasurer of the United States in the City of Washington, District of Columbia.

(a) Premiums may be paid annually, semiannually, or quarterly, in advance, in which case the premium payable will be the sum of the monthly premiums for the period discounted at three and one-half per centum per annum. The discounted premiums for these periods are stated on the

first page hereof. At maturity by death or otherwise, the discounted value at three and one-half per centum per annum of the premiums paid in advance beyond the current calendar month shall be refunded to the Insured, if living; otherwise to the beneficiary.

(b) If any premium be not paid when due, this policy shall cease and become void except as hereinafter provided.

2. For the payment of any premium under this policy, a grace of thirty-one days without interest will be allowed, during which time the policy will remain in force; but if the policy shall become a claim within the grace period, the unpaid premiums shall be deducted from the amount of insurance payable.

3. This policy, if it has not been surrendered for a cash value, may be reinstated at any time after lapse upon evidence of the insurability of the Insured satisfactory to the Director of the United States Veterans Bureau, and upon the payment of all premiums in arrears, with interest from their several due dates at the rate of five per centum per annum, and the payment or reinstatement of any indebtedness which existed at the time of such default, with policy loan interest. However, if such indebtedness with interest would exceed the reserve of this policy at the time of application for reinstatement of said policy, then the amount of such excess shall be paid by the Insured as a condition of the reinstatement of indebtedness and of this policy.

* * * * *

8. At the maturity of this policy by total permanent disability or death, any indebtedness, unless paid off in cash, shall be liquidated by reducing the monthly installment

in the proportion which the indebtedness bears to the commuted value of the monthly installments, as may then be payable hereunder, excluding dividend accumulations. If the policy shall be payable in one sum at death, any indebtedness shall be deducted from the amount payable under the policy.

9. This policy shall be incontestable after the insurance has been in force for six months from the date of issuance or reinstatement, except for fraud or nonpayment of premiums, and the policy is issued free of restrictions as to travel, residence, occupation, or military or naval service. However, no insurance shall be payable for death inflicted as a lawful punishment for crime or military offense, except when inflicted by the enemy: *Provided,* That the cash value hereof less any indebtedness on the date of such death shall be paid to the designated beneficiary if living, or if there be no designated beneficiary alive at the death of the Insured, the said value shall be paid to the estate of the Insured. (This provision was superseded by the amendment to Section 307 of the World War Veterans' Act, on July 3, 1930, *supra.*)

* * * * *

11. Total permanent disability as referred to herein is any impairment of mind or body which continuously renders it impossible for the disabled person to follow any substantially gainful occupation, and which is founded upon conditions which render it reasonably certain that the total disability will continue throughout the life of the disabled person. The total permanent disability benefits may relate back to a date not exceeding six months prior to receipt of due proof of such total permanent disability, and any premiums paid after receipt of due

proof of total permanent disability, and within the six months, shall be refunded without interest.

(a) Without prejudice to any other cause of disability, the permanent loss of the use of both feet, or both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the loss of hearing of both ears, or becoming permanently helpless or permanently bedridden, shall be deemed to be total permanent disability; and monthly installments for any of these specifically enumerated causes of total permanent disability shall accrue from the date of such total permanent disability, and any premiums paid after the date of such total permanent disability shall be refunded without interest.

12. Nothwithstanding proof of total permanent disability may have been accepted as satisfactory, the Insured shall at any time, on demand, furnish proof satisfactory to the Director of the United States Veterans' Bureau of the continuance of such total permanent disability, and if the Insured shall fail to furnish such proof, all payments of monthly installments on account of such total permanent disability hereunder shall cease, and all premiums thereafter falling due shall be payable in conformity with this policy. Thereafter the premium to be paid, and the cash values, paid-up insurance values, and loan values shall be reduced so that the resulting premium and values shall bear the same proportion to the premium and values, respectively, specified hereon, that the commuted value of the installments (two hundred and forty less the number paid) bears to the commuted value of two hundred and forty installments. The ex-

tended-insurance values shall be modified accordingly.

* * * * *

18. This policy may be exchanged for a policy of the same amount, bearing the same date and based on the same age, on any plan of insurance issued by the United States Veterans Bureau at a higher rate of premium, upon payment of the difference in reserve on this policy and the reserve on the new policy. Such exchange will be made without medical examination upon complete surrender of this policy while in force and within five years from the effective date hereof.

(a) This policy may be exchanged for a policy of the same amount on any plan of insurance issued by the United States Veterans' Bureau at a higher rate of premium, upon payment of the current monthly premium at the attained age of the insured for the plan of insurance selected. The reserve (if any) on this policy will be allowed as a credit on the current monthly premium. Such exchange will be made without medical examination upon complete surrender of this policy while in force and within five years from the effective date hereof.

* * * * *

21. This insurance is granted under and subject to the provisions of the World War Veterans' Act, 1924, and amendments and supplements thereto. No person, except the Director of the United States Veterans Bureau may waive forfeitures, or make, modify, or discharge contracts, or extend the time for paying a premium, or bind the United States by making any promise respecting any benefits hereunder.

The administrative practice with regard to rights under reinstated insurance is set forth in the following letter from the Administrator of Veterans' Affairs:

VETERANS' ADMINISTRATION,
Washington, October 6, 1937.

Office of
The Administrator of
Veterans Affairs

Honorable STANLEY REED,
Solicitor General,
Department of Justice,
Washington, D. C.

MY DEAR MR. REED: You have advised me that you are considering the question whether or not to file a petition for a writ of certiorari in the case of *United States* v. *Stanley J. Patryas,* Circuit Court of Appeals for the Seventh Circuit, June 21, 1937, which involves the question whether or not total and permanent disability benefits are payable under a Government Life (Converted) Insurance Policy on account of a total and permanent disability which originated prior to the inception of the policy, and you ask to be advised fully as to the past and present administrative practice in cases involving the same question.

By a decision of September 3, 1921, 1 Comp. Gen. 108, the Comptroller General considered the question of reinstatements under Section 408 of the War Risk Insurance Act, as amended August 9, 1921, in relation to Section 411 of the War Risk Insurance Act, as amended August 9, 1921, the latter section making policies of insurance incontestable after six months from date of issuance or reinstatement except for fraud or non-payment of premiums. As the result

of the foregoing decision, the former General Counsel of the then Veterans' Bureau under date of December 16, 1921, promulgated the following instructions:

"In determining the validity and effect of reinstatement of insurance under the opinion of the Comptroller General of September 3, 1921, the following principles will be applied in all cases where the insured at the time of application for reinstatement, or thereafter, and during his lifetime was rated less than permanent total:

"(1) If the application for reinstatement was approved and the insured paid premiums for six months thereafter, a subsequent rating of permanent and total disability effective as of a date prior to the date of reinstatement will not affect the validity of the reinstatement notwithstanding that the insured died or allowed his insurance to lapse after the expiration of the six months. Payment of permanent and total disability benefits, however, under the policy, shall begin as of the date of the expiration of the six months period.

"(2) If the application for reinstatement was approved and the insured paid premiums for any period less than six months and during such period was declared permanently and totally disabled effective as of a date prior to the date of reinstatement, such rating will not affect the validity of the reinstatement, but the permanent and total disability benefits shall begin as of the date of the rating.

"(3) If the application for reinstatement was approved and the insured paid premiums for any number of months less than six, and during that period died with insurance in force, a subsequent rating of perma-

nent total disability effective as of a date prior to the date of reinstatement will not affect the validity of the reinstatement. The claim, however, will be treated as a death claim only and no permanent and total disability benefits awarded.

"(4) If the application for reinstatement was approved and insured paid premiums for any period less than six months, and during such period and after such approval, the application for reinstatement was rejected on the ground that the insured was not in as good health at the date of reinstatement as he was at the date of lapse, the reinstatement shall, nevertheless, be regarded as valid, and a subsequent rating of permanent total disability effective as of a date prior to the date of reinstatement will not affect the validity of such reinstatement.

"(5) The principles stated in the foregoing paragraphs one to four inclusive, will not be applied where the permanent and total disability is statutory as defined in Section 302, sub-section 3 of the War Risk Insurance Act.

"(6) If the application for reinstatement was approved and the insured paid premiums for any number of months less than six, and allowed his insurance to lapse, a subsequent rating of permanent and total disability effective as of a date prior to the date of reinstatement will invalidate the reinstatement.

"(7) If the application for reinstatement was never accepted and insured was subsequently rated as permanently and totally disabled effective as of a date prior to the attempted reinstatement, the rejection will be affirmed even though the insured has died and though the disease was of service origin

under which the insured might have been reinstated under the decision of the Comptroller General had he not been permanently and totally disabled.

"(8) This memorandum is not intended to cover cases where the first rating of less than permanent and total disability is made subsequent to the time of application for reinstatement, and also subsequent to the death of the insured. Cases of this character should be referred to the General Counsel to be handled specially.

"(9) The memorandum addressed by the General Counsel to the Board of Review October 26, 1921, is hereby modified in so far as it is in conflict with this memorandum."

The six months period for contest under Section 411 of the War Risk Insurance Act, as amended, was carried forward into the World War Veterans Act, 1924, as Section 307 until the amendment thereto of July 3, 1930. After the amendment of July 3, 1930, to Section 307 of the World War Veterans Act, the administrative policy of the Veterans Administration was that insurance was incontestable except for the grounds specifically enumerated in that Section from and after the date of issuance, reinstatement or conversion and that payments under such incontestable contracts or policies should begin from the date of maturity thereof. This principle was laid down in the opinion of the former General Counsel of July 21, 1930, in the case of Angelo Di Corti, XC–451,109, which was approved as a precedent for general application on August 6, 1930. This opinion was made the basis of Administrator's Decision No. 41 of April 10, 1931. As it is understood that the Bureau of War Risk Litigation of the Department

of Justice maintains a file of Administrator's Decisions, Administrator's Decision No. 41 is not quoted in full in this letter.

When this Administration received notice of the outcome of the Stevens case in the lower court and had been apprised of the fact that an appeal had been authorized in that case, the following instruction approved by the Administrator July 26, 1932 was issued; holding that in substance as to cases which would have been covered by Administrator's Decision No. 41 of April 10, 1931, the Veterans' Administration in view of the appeal to be taken in the Stevens case should cease maturing contracts of term insurance, reinstatements thereof or policies of Government insurance where it had been determined that the insured was permanently and totally disabled prior to the granting of the contract, its reinstatement or conversion. This instruction was in the form of a recommendation from the then Solicitor to the Administrator, here quoted:

"By your Decision No. 41, dated April 10, 1931, you held that a war risk term insurance contract in the amount of $10,000, which was reinstated effective September 1, 1920, was by virtue of the provision of Section 307 of the World War Veterans' Act, as amended, July 3, 1930, incontestable despite the fact that the insured was rated as permanently and totally disabled for insurance purposes from July 19, 1920, which it will be noted is prior to the reinstatement of the contract, and that payments thereunder should begin as of September 1, 1920, the effective date of the reinstatement.

"Following the above decision, the Administration has matured reinstated contracts of war risk term insurance and pol-

icies of Government Life Insurance as of their effective dates, notwithstanding that the insureds were rated as becoming permanently and totally disabled at a date prior to the reinstatements or conversions. This rule has been followed in cases where an insured who had reinstated and/or converted his insurance into a policy of Government Life Insurance, filed suit on his original term contract, and the Administration thereafter determined that he became permanently and totally disabled subsequent to the cessation of payment of premiums on the original contract but prior to the reinstatement or conversion, the practice in this character of case being to submit same on an agreed statement of facts which would permit a judgment maturing the reinstated contract or Government policy as of its effective date.

"In the case of Tom G. Larson (XC–1 345 278), the insured was granted a contract of insurance on February 1, 1918, which lapsed for non-payment of the premium due June 1, 1919. The Executor of his estate filed suit on the contract alleging that insured became permanently and totally disabled the first of November, 1918, and that the contract was thereby matured. At the trial of this suit, the court sustained the Government's motion for a directed verdict on ground that insured was permanently and totally disabled prior to the granting of the contract sued on and rendered judgment in its behalf.

"In the case of William M. Stevens (C–235,025), the insured made application for reinstatement of his lapsed contract of insurance on April 13, 1925, which reinstated contract lapsed for non-payment of the premium due August 1, 1926. He filed suit on

the reinstated contract alleging that same was reinstated on April 13, 1925; that he had been permanently and totally disabled ever since April 16, 1925, and that said contract was thereby matured. At the trial of this cause, the court found that the reinstatement was effective May 1, 1925; that insured was totally and permanently disabled on the first day of May, 1925, and as a matter of fact further found that insured became totally and permanently disabled some time in the year of 1920, and that insured was entitled to recover on his reinstated contract installments due thereunder from and after the first day of May, 1925. The Government sought judgment in this case on the ground that since, under the finding of the court, the insured was permanently and totally disabled prior to the granting of the reinstated contract, there was no loss thereunder and insured could not recover.

"The position of the Government in the Stevens case was grounded on the ruling in the Larson case above mentioned, which was, by the way, decided by the same court that tried the Stevens case. The court, however, declined to sustain the position of the Government in the Stevens case on the ground that since the Government had reinstated the contract it was precluded from going behind the reinstatement and showing that insured was permanently and totally disabled prior thereto.

"The Solicitor General has authorized an appeal from the decision in the Stevens case.

"In the case of John Bradshaw (C–392 647), the insured filed suit against the United States alleging that he was granted a contract of war risk term insurance and that he became permanently and totally

disabled while same was in force, thus resulting in its maturity. In its answer, the Government denied the granting of the contract sued on, and further answering averred that if the insured were totally and permanently disabled on the date of his discharge from the Army, he was as much disabled at the time of his induction into the military service of the United States as at any time subsequent thereto, and that he has suffered no loss. The insured moved to strike that part of the answer alleging that insured was disabled at the time he was inducted into the military service on the ground that same was a contest of the contract sued on. The court overruled the motion to strike and held that Congress never intended by Section 307, supra, to prohibit the defense that an insured was totally and permanently disabled prior to the date of his application for insurance.

"In view of the decisions in the Larson and Bradshaw cases, and the fact that the Solicitor General has authorized an appeal from the judgment against the Government in the Stevens case, it is recommended that until the appeal in the Stevens case is decided, the Administration cease maturing contracts of term insurance, reinstatements thereof, or policies of Government Life Insurance where the Administration has determined that the insured became permanently and totally disabled prior to the granting of the contract, its reinstatement, or conversion."

Subsequent to the determination of the appeal in the Stevens case, there was issued on January 22, 1934 by the Administrator, (signed and released February 2, 1934) the following memorandum:

"The practice of changing previous decisions or ratings which formed the basis for conferring upon applicants for insurance or for reinstatement thereof certain important insurable rights, necessitates the clarification of the administrative policy in respect to such prior decisions or ratings.

"The Veterans Administration may not, in fairness to policy holders, in the absence of fraud, reverse former decisions or ratings whereon was based an insurable right, contracted in good faith, unless the evidence of record clearly shows error as to which there might be no reasonable difference of opinion. Actions or ratings resulting in the approval of reinstatements of insurance by policy holders who were at the time shown to be suffering from any of the so-called statutory disabilities, or from patently terminal conditions from which no recovery could be possible, upon the basis of any sound medical theory, are examples of former decisions or ratings which are not protected under this instruction.

"You are therefore instructed that except as to the actions or ratings above described which, upon the basis of evidence of record when such actions or ratings were accomplished, clearly constituted error, any rating or action of the Bureau of War Risk Insurance, the Veterans Bureau or the Veterans Administration, whereon was based an insurable right, contracted in good faith, will, in the absence of fraud, be binding on the Board of Veterans' Appeals, and the Director of Insurance (Insurance Claims Council) and no rating hereafter will be made covering any period of time which would invalidate any such right."

No instructions have as yet been issued in view of the contrary decision in the Patryas case and the foregoing presents an outline of the past and present administrative practice in cases involving this question. If you should desire any further information which you may deem of assistance to you in the preparation of the proposed petition for a writ of certiorari to the United States Supreme Court in the Patryas case, you may be assured that any such request will receive thorough consideration.

Respectfully,

FRANK T. HINES (Signed)
FRANK T. HINES,
Administrator.

APPENDIX C—CONGRESSIONAL COMMITTEE REPORTS

The House Committee Report (H. Rep. 104, 67th Cong., 1st Sess. p. 11) accompanying the bill which contained the first statutory provision for incontestability (c. 57, Sec. 30, 42 Stat. 157, Aug. 9, 1921) stated in pertinent part:

> It is the opinion of your committee that a provision of this kind placed in the law would add stability to the policies issued or hereafter issued by the Government and give assurance that only in case of fraud or nonpayment of premiums would payment of the insurance be denied. A provision similar to this is usually found in the policies issued by private companies and has been found to be mutually beneficial to all concerned.

The Senate Committee Report (S. Rep. 1128, 71st Cong., 2nd Sess. p. 9–10) which accompanied the bill enacted to amend Sec. 307, World War Veterans' Act on July 3, 1930, stated in pertinent part:

> Section 24 amends section 307, which relates to the incontestability of insurance contracts. The purpose is to make all contracts or policies of insurance incontestable from date of issuance, reinstatement, or conversion, for all reasons except fraud, nonpayment of premiums, or that the applicant was not a member of the military or naval forces of the United States. This incontestability would protect contracts where they were not applied for within the time limit required, where the applicant was not in the required

state of health, or was permanently and totally disabled prior to the date of application, or for any other reasons except those specifically mentioned in the statute. It is appreciated that this is a broad provision, but it was felt that it was necessary in order to do justice to the veterans, to place this insurance on a parity with commercial insurance companies from a stability standpoint, and to overcome decisions of the Comptroller General which practically nullify the section as it now exists.

APPENDIX D—COURT RULES

Rule 9, Paragraph 2, of the Circuit Court of Appeals for the Seventh Circuit provides:

> Only so much of the evidence shall be embraced in the bill of exceptions as may be necessary to present clearly the questions of law involved in the rulings to which exceptions are reserved, and such evidence as is embraced therein shall be set forth in condensed and narrative form, save as a proper understanding of the questions presented may require that parts of it be set forth otherwise.

U. S. GOVERNMENT PRINTING OFFICE: 1938